



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 28, 1996

Ms. Helen M. Gros
Senior Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR96-1049

Dear Ms. Gros:

You seek reconsideration of Open Records Letter No. 94-166 (1994), in which this office determined that the Texas Open Records Act, Government Code chapter 552, required the City of Houston (the "city") to make certain information available to the public. We have assigned your request for reconsideration ID# 25827.

The City of Houston Police Department received an open records request for the police report regarding the shooting death of Andrew de Vries. You sought to withhold the requested report under sections 552.103 and 552.108 of the Government Code. We concluded in Open Records Letter No. 94-166 (1994) that neither exception provided a basis for withholding the requested information from required public disclosure, but invited you to submit specific evidence demonstrating that the investigation and prosecution in this case are proceeding, that is, the specific circumstances under which the prosecutor would present the case to the grand jury again or the specific steps the police are taking to further investigate the incident.

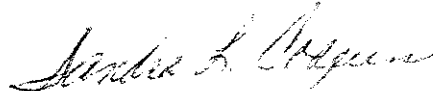
Both you and the Harris County District Attorney have asserted that circumstances may warrant a continuation of this investigation and that, in any event, much of the requested information was excepted from disclosure as "attorney work product." Since these issues were the subjects of litigation that was pending before the Texas Supreme Court, it was inappropriate for this office to rule on these issues.

On June 14, 1996, the Texas Supreme Court ruled that prosecutors may withhold from disclosure information relating to criminal investigations regardless of whether the investigation is active or closed. *Holmes v. Morales*, No. 95-1251, slip op. (Tex. June 14, 1996). As the requested records relate to a criminal investigation, the city may withhold the requested records under section 552.108. We note, however, that section 552.108 is

discretionary and may be waived by the city for information that is not otherwise confidential.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Sandra L. Coaxum, CPA
Chief, Open Records Division

SLC/SES/ch

Ref: ID# 25827

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